

9 FAM 42.21 Exhibit II

8 CFR 204.3, ORPHANS

(TL:VISA-170; 10-01-1997)

8 CFR 204.3(b), in part

§204.3 Orphans.

(b) *Definitions.* As used in this section. The term:

Abandonment by both parents means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations and claims to the child, and control over and possession of the child, but also the actual act of [surrendering] such rights obligations, claims, control, and possession. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party, (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned.

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Competent authority means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.

Desertion by both parents means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country.

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Disappearance of both parents means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

Foreign-sending country means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

Home study preparer means any party licensed or otherwise authorized under the law of the state of the orphan's proposed residence to conduct the research and preparation for a home study, including the required personal interview(s). This term includes a public agency with authority under that state's law in adoption matters, public or private adoption agencies licensed or otherwise authorized to conduct the research and preparation for a home study, including the required personal interview(s), under the laws of the state of the orphan's proposed residence. In the case of an orphan whose adoption has been finalized abroad and whose adoptive parents reside abroad, the home study preparer includes any party licensed or otherwise authorized to conduct home studies under the law of any state of the United States, or any party licensed or otherwise authorized by the foreign country's adoption authorities to conduct home studies under the laws of the foreign country.

Incapable of providing proper care means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the *foreign-sending country*.

Loss from both parents means the involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest, or other calamitous event beyond the control of the parents, as verified by a competent authority in accordance with the laws of the foreign sending country.

Orphan petition means Form I-600 (Petition to Classify Orphan as an Immediate Relative). The petition must be completed in accordance with the form's instructions and submitted with the required supporting documentation and, if there is not an advanced processing application approved within the previous 18 months or pending, the fee as required in 8 CFR 103.7(b)(1). The petition must be signed in accordance with the form's instructions by the married petitioner and spouse, or the unmarried petitioner.

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Overseas site means the Department of State immigrant visa-issuing post having jurisdiction over the orphan's residence, or in foreign countries in which the Service[s] has an office or offices, the Service office having jurisdiction over the orphan's residence.

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Petitioner means a married United States citizen of any age, or an unmarried United States citizen who is at least 24 years old at the time he or she files the advanced processing application and at least 25 years old at the time he or she files the orphan petition. In the case of a married couple, both of whom are United States citizens, either party may be the petitioner.

Prospective adoptive parents means a married United States citizen of any age and his or her spouse of any age, or an unmarried United States citizen who is at least 24 years old at the time he or she files the advanced processing application and at least 25 years old at the time he or she files the orphan petition. The spouse of the United States citizen may be a citizen or an alien. An alien spouse must be in lawful immigration status if residing in the United States.

Separation from both parents means the involuntary severance of the child from his or her parents by action of a competent authority for good cause and in accordance with the laws of the foreign-sending country. The parents must have been properly notified and granted the opportunity to contest such action. The termination of all parental rights and obligations must be permanent and unconditional.

Sole parent means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption. This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate. In all cases, a sole parent must be *incapable of providing proper care* as that term is defined in this section.

Surviving parent means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the Act. In all cases, a surviving parent must be *incapable of providing proper care* as that term is defined in this section.

